

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
YOUNAS HAJI,

Plaintiff,

v.

THE UNITED STATES OF AMERICA, THE
CITY OF NEW YORK, DRUG
ENFORCEMENT AGENCY SPECIAL
AGENTS ROBERT BARRETT, KATE
BARNARD, PAUL BUCHANAN, AND
UNKNOWN EMPLOYEES OF THE
UNITED STATES, NEW YORK STATE,
AND NEW YORK CITY,

Defendants.

ECF Case

No. 08 Civ. 2230 (TPG)(JCF)

**DEFENDANTS' LOCAL
RULE 56.1 STATEMENT OF
UNDISPUTED FACTS**

Pursuant to Civil Rule 56.1 of the Local Rules of the United States District Court for the Southern District of New York, Defendants the United States of America, and Drug Enforcement Administration Special Agents Robert Barrett, Kate Barnard, and Paul Buchanan (the “Federal Defendants”) state that there is no genuine issue to be tried with respect to the following material facts relating to the above-captioned *Bivens* and Federal Tort Claims Act action:

New York Organized Crime Drug Enforcement Strike Force

1. The New York Organized Crime Drug Enforcement Strike Force (“Strike Force”), is a federal task force charged with investigating international drug trafficking and money laundering organizations with ties to New York City. See Declaration of Robert Barrett, (“Barrett Declaration”), dated July 30, 2008, ¶ 1; Compl. ¶ 2.

2. The Strike Force is comprised, in part, of Special Agents with the Drug Enforcement Administration (“DEA”), Immigration and Customs Enforcement (“ICE”), the Internal Revenue Service (“IRS”), and other agencies, as well as federally-deputized officers of the New York State Police and New York City Police Department. Barrett Decl. ¶ 1; Compl. ¶ 11.

The Khat Investigation

3. In 2006, the Strike Force opened an investigation into khat importation, distribution, and money laundering. Barrett Decl. ¶¶ 1, 3; Compl. ¶¶ 11, 12.
4. Khat is a tall, evergreen shrub cultivated in Kenya, Ethiopia, and neighboring countries in Africa, and which contains cathinone, a stimulant classified as a Schedule I controlled substance in the United States. Barrett Decl. ¶ 4.
5. In early 2006, the Strike Force learned that Somali immigrants supplied large quantities of khat to the Boston metropolitan area and used a money-transmitting business named Olympic Hawala, in Portland, Maine, to send to Europe payments for khat shipments to, and proceeds of khat sales in, the United States. Barrett Decl. ¶ 6.
6. The Strike Force intercepted calls to and from suspected ring leaders Ali Awad (“Awad”) and Bashi Muse (“Muse”), and many of those calls referred to a co-conspirator named “Yunis.” Barrett Decl. ¶ 7; Compl. ¶¶ 12-13.
7. A Somali immigrant named Ismaciil Geele (“Geele”), is a khat distributor well known to federal agents. Barrett Decl. ¶ 19.

8. On February 10, 2006, the Strike Force conducted mobile surveillance, in unmarked vehicles, of several suspects, including Yunis, while intercepting the conspirators' telephone conversations. Barrett Decl. ¶ 9; Compl. ¶ 15.
9. Strike Force members observed Yunis entering the FedEx Kinkos store in Harlem at 116th Street near Broadway with one cardboard box. One of the Special Agents also entered the FedEx Kinkos store, and saw Yunis filling out mailing labels. Barrett Decl. ¶ 15.

Identification of Haji

10. Special Agent Barrett sought assistance from other Strike Force members to identify Yunis. Specifically, he contacted the Boston DEA office and ICE. Barrett Decl. ¶ 18.
11. Special Agent Barrett requested photographs of all individuals with the first name Yunis (or Younas, Younis, Yonas); all persons associated with the address in Roxbury, Massachusetts, the subscriber for Yunis' cellular phone service; a search of immigration databases for all Somali immigrants with the first name of Yunis (and other spellings thereof), residing in Massachusetts and Maine, where the Strike Force believed khat traffickers laundered proceeds through Olympic Hawala. Barrett Decl. ¶ 18.
12. The immigration file of Younas Haji ("Haji") showed that Haji was from Somalia, that he transmitted money overseas through Olympic Hawala in Portland, Maine, and that he was associated with Geele. Barrett Decl. ¶ 19.

13. Special Agent Barrett showed the photographs he received from the Boston DEA office and ICE to the Special Agents who conducted the surveillance of Yunis at the FedEx Kinkos store on February 10, 2006, and one of the Special Agents positively identified Haji as the man he observed at the FedEx Kinkos store. Barrett Decl. ¶ 20.

Indictment of Yunis / Haji

14. On July 19, 2006, Special Agent Barrett testified before a federal grand jury in the Southern District of New York, presenting all the evidence the Strike Force had collected against the khat conspirators. Barrett Decl. ¶ 21; Compl. ¶ 20.
15. Special Agent Barrett had no reason to believe that the Strike Force had identified the wrong person, and, to the contrary, he believed that the Strike Force had identified the Yunis who was part of the khat conspiracy. Barrett Decl. ¶ 28.
16. Special Agent Barrett believes he acted reasonably, and he believed in good faith that his actions were lawful during the entirety of the khat investigation. Barrett Decl. ¶ 29.
17. The grand jury returned a six-count sealed indictment against 44 individuals, including Haji. Barrett Decl. ¶ 21; *See United States v. Muse, et al.*, No. 06-cr-00600 (DLC) (S.D.N.Y. filed July 19, 2006) (docket entry Nos. 2, 47 (reflecting order to unseal indictment and superseding indictment)).

18. Haji was charged in Count I with conspiracy to distribute and possess with intent to distribute a controlled substance, namely cathinone in the form of khat, in violation of 21 U.S.C. §§ 812, 841(a)(1), 841(b)(1)(C), and 846, and in Count II with conspiracy to import a detectable amount of cathinone, in the form of khat, in violation of 21 U.S.C. §§ 812, 952(a), 960(b)(3). Barrett Decl. ¶ 21; *See United States v. Muse, et al.*, No. 06-cr-00600 (DLC) (S.D.N.Y. filed July 19, 2006) (docket entry Nos. 2, 47 (reflecting order to unseal indictment and superseding indictment)).

Arrest Warrant for Haji

19. A United States Magistrate Judge signed an Arrest Warrant for Haji pursuant to the indictment. *See* Declaration of Katherine Barnard, (“Barnard Declaration”), dated July 31, 2008, ¶ 3, Ex. A.
20. Special Agent Barnard, along with Special Agent Paul Buchanan, executed the warrant and arrested Haji on July 26, 2006. Barnard Decl. ¶ 4, Ex. A; Compl. ¶ 23.
21. Both Special Agents Barnard and Buchanan acted reasonably and believed in good faith that their actions were lawful during the events leading up to Haji’s arrest. Barnard Decl. ¶¶ 8, 9; *See* Declaration of Paul Buchanan, dated July 31, 2008, ¶¶ 3, 4.

Dismissal of Haji’s Indictment

22. On January 8, 2007, prosecutors filed a *nolle prosequi*, which was signed by the Honorable Denice Cote, District Court Judge, Southern District of New

York, on January 16, 2007. Declaration of Carolina A. Fornos, dated July 31, 2008, at ¶ 2, Ex. A; Compl. ¶ 5.

Date: July 31, 2008
New York, New York

Respectfully submitted,

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